

The 4th February, 1982

No. 9(1)82-6Lab. 247.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, Labour Court, Rohtak in respect of the dispute between the workmen and the management of Managing Director-cum-Commissioner, Dairy Development Corporation Ltd., Chandigarh, (ii) Manager, Milk Plant Rohtak :—

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No 61 of 1978

between

SHRI RAMESH CHANDER, WORKMAN AND THE MANAGEMENT OF M/S MANAGING DIRECTOR-CUM-COMMISSIONER, HARYANA DAIRY DEVELOPMENT CORPORATION LTD., CHANDIGARH, (II) MANAGER, MILK PLANT, ROHTAK

Present :

Shri Sagar Ram Gupta for the workman.

Shri K.N. Nagpal for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—vide his order No. ID/RTK/23-A-78/17488, dated 5th May, 1978 under section 10(i)(c) of the I.D. Act for adjudication of the dispute existing between Shri Ramesh Chander, workman and the management of Managing Director-cum-Commissioner, Haryana Dairy Development Corporation Ltd., Chandigarh, (ii) Manager, Milk Plant, Rohtak. The term of the reference was :—

Whether the termination of services of Shri Ramesh Chander was justified and in order ? If not, to what relief is he entitled ?

On the receipt of the order of reference, notices as usual, were sent to the parties. The parties appeared in response to the same, filed their respective pleadings and issues were framed on the basis of their pleadings on 4th October, 1978. The management examined Shri R.K. Chhabra as MW-1 on 2nd April, 1979. The management filed an application on 2nd May, 1979 for amendment of written statement. The application of the management was allowed,—vide order, dated 5th June, 1979. The workman filed the rejoinder to the amended written statement and the following issues were framed on the basis of the pleas of the parties :—

1. Whether the domestic enquiry held by the management is proper and fair in accordance with the natural justice ? If so, to what effect ?
2. Whether the termination of services of the workman was justified and in order ? If not, to what relief is he entitled ?
3. Whether the management has completely lost faith in him ? If so, to what effect ?

The management further examined Shri Gian Sagar Sardana and Shri S.K. Arora, General Manager, respondent plant and Shri Muni Lal Gupta, Assistant, O/O Haryana Dairy Development Corporation, Chandigarh as their witnesses and closed their case. The workman examined himself as his only witness and closed his case. I heard the learned representatives of the parties and decide issuewise as under :—

Issue No. 1 :— MW-1 deposed that a theft had taken place in the plant and this workman was involved in the same. The General Manager and the Accounts Executive conducted spot enquiry in his presence. Ex. M-1 was the statement of the workman recorded before the spot enquiry was held and the workman signed at points 'A' & 'B' on Ex. M-1. The statement recorded during spot enquiry was marked Ex. M-2, Ex. M-2 was also signed by the General Manager and the Account Executive and also by the workman. The contents of Ex. M-2 were explained in Hindi to the workman before obtaining his signatures. Ex. M-3 and M-4 and M-5 were recorded in presence of the workman and these documents were signed by him also (witness). He gave out in his cross-examination that no charge-sheet was issued to the workman before the spot enquiry was conducted and he was also not aware, if any, explanation was sought from the workman. The entire enquiry was conducted within two hour. The General Manager, himself and the Accounts Executive all conducted the enquiry together. No findings other than contained in Ex. M-1 to M-5 were submitted to the management. He denied the suggestion being incorrect that the signature of the workman on Ex. M-1 were obtained forcibly by threatening and beating him. He also denied as incorrect to say that Ex. M-3 to M-5 were prepared afterwards and not during the enquiry as these were no signature of the workman on them. He admitted as correct that after acquittal of the three accused the other two accused Zile Singh and Sita Ram were reinstated by the management. He further stated that the workman was never placed under suspension and the workman was not allowed entry after the day of occurrence. MW-2 Shri Gian Sagar Sardana has stated that he was Dairy Supervisor at the relevant time. Shri Satya Narain Gateman informed him about the theft at about 11-30 p.m. on 20th January, 1977. He went to the spot and found two bags of butter. Ramesh Chander was there. He also asked the workman to give him in writing whatever he wanted to say. The workman wrote Ex. M-1 in his own hand and gave it to him. He handed over Ex. M-1 to the next shift Incharge to be handed over to the General Manager. He stated in his cross-examination that no enquiry was held in his presence. When Ex M-1 was written by the workman in his office there were Shri Satya Narain Gateman, Jaspal Singh, Assistant Dairy Supervisor, Shri T. B. Thirani, Dairy Supervisor and also one or two more persons. He further stated that he did not know if two other workmen were also involved in the said theft. Ex. M-5 statement was not given to him by Shri Satya Narain. Shri Satya did not inform him that any other workman beside Shri Ramesh was also involved in the said theft. He admitted that the oral statement of Shri Satya Narain made before

him differ from Ex. M-5. He also admitted that the other two co-accused were reinstated by the management. He denied the suggestion that the statement Ex. M-1 was got written by them under coercion and by man-handling the workman. MW-3 and MW-2 have stated that on the basis of the confessional statement made by the workman which is Ex. M-2 they based their opinion that the workman was not fit for being kept on duty and there was no other instance. MW-3 has also stated that he did not remember as to who was the enquiry officer.

From the statements of the management witnesses it is clear that there was no enquiry officer who was duly appointed by the management and the witnesses were not clear as to who conducted the enquiry. MW-1 has stated that the General Manager, himself and the Accounts Executive conducted the enquiry together but they too were not appointed by the competent authority who is Managing Director and they themselves assumed the powers of the Enquiry Officer and conducted the alleged enquiry under their own whim and fancy. It has also been admitted that no charge sheet was given nor any explanation was sought before the conduct of enquiry and the enquiry was completed within two hours. It has also not been brought on record either orally or by document that the workman was given the opportunity of cross-examination and to produce his defence. The management has only founded their case on Ex. M-1 and M-2 the alleged confessional statement of the workman. The confessional statement made before the authorities and not before an independent and impartial Enquiry Officer cannot be considered as a valid confession. The apprehension of coercion and undue pressure cannot be ruled out under the circumstances in which all the authorities of the management hovered around the workman and acted the Enquiry Officer. No findings of the enquiry were submitted by either of the officers which goes to show that there was no enquiry Officer nor there was any enquiry held and the alleged enquiry is merely a formality. No principles of natural justice have been followed nor the procedure under law was observed in the conduct of the enquiry and the same cannot be held to be fair and proper. The termination based on the findings of this enquiry cannot be held to be valid. The issue is accordingly decided against the management.

Issue No. 2 & 3: The management has also not been able to produce the other workmen on whose statements the management relied in the enquiry to substantiate their allegation that the workman was guilty of the theft, and has only contended themselves on the alleged confession of the workman. The management representative argued that in view of the confessional statement of the workman there was left nothing for the enquiry officer and there was no need to hold further enquiry. He cited AIR 1963 Bombay 121 in support of his contention wherein it has been held that there was nothing left for the enquiry Officer to prove and considering the ambit of enquiry before the Enquiry Officer there was no scope for leading evidence before him, in view of the facts admitted there was little scope for examination of witnesses before the Enquiry Officer. But the facts of the case cited above are different from the facts of the case in hand, there is no enquiry Officer appointed by the Managing Director who is the competent authority to conduct the enquiry and the confessional statement relied on by the management cannot be said to be made before an enquiry Officer and the statement cannot be held to be a Confessional statement in the real sense of the word. The termination order is Ex. M-6 which reads that the service of Shri Ramesh Chander Compressor Operator are no longer required is an order in the form of termination simpliciter and there is no mention of the theft to which the workmen was found guilty. This termination is not by way of punishment and amounted to retrenchment but the management has not brought any evidence to the effect that the workman was paid the retrenchment compensation alongwith notice pay as required under section 26(F) of the I. D. Act. The workman has been acquitted by the Criminal Court by extending the benefit of doubt to him. It is well settled rule of law that acquittal is always acquittal may be on any ground till it is reversed on appeal. The management reinstated the other co-accused but denied reinstatement to the workman after acquittal order. This is discrimination against the workman. The plea of the management they lost faith in the workman and the statement of the MW-2 and MW-3 without supporting their opinion from the past record of the workman and basing their opinion on Ex. M-2 which has been made before the authorities and not before an independent impartial Enquiry officer not sufficient to deny reinstatement to the workman to which he is entitled under the normal rule. The management has not been able to establish the fact as to how the management lost faith in the workman and this seems to be a whim and belief of the employer and they have not given any cogent reason for the same. The workman is therefore entitled to reinstatement with continuity of service and with full back wages. The reference is answered and returned accordingly.

The 25th December, 1981.

BANWARI LAL DALAL,
Presiding Officer,

Labour Court, Haryana, Rohtak.

Endst. No. 4500, dated the 30th December, 1981.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the I. D. Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

H. L. GUGNANI,
Commissioner and Secretary to Government, Haryana,
Labour and Employment Department.